

**AUCTIONEER BOARD MEETING  
MINUTES  
JANUARY 27, 2004**

**PRESENT:** Richard Lust, Marie Skic, Jay Clarke (via telephone), Carl Theorin and Patrick McNamara

**EXCUSED:** Mark Shain

**STAFF PRESENT:** Jerry Lowrie, Bureau Director, Ruby Jefferson-Moore, Legal Counsel, Pat Schenck, Program Assistant, and Division of Enforcement Staff.

**GUESTS:** Kenneth Schultz

**CALL TO ORDER**

Richard Lust called the meeting to order at 9:17 a.m. A quorum of 5 members was present.

**AGENDA**

**Amendments to Agenda:**

- Move adoption of agenda under Item 1 b.

**MOTION:** Carl Theorin moved, seconded by Marie Skic, to adopt the agenda as amended. Motion carried unanimously.

**INTRODUCTION OF NEW BOARD MEMBER – PATRICK MCNAMARA OF LANCASTER WI**

Mr. Lust introduced Patrick McNamara as the new Professional member on the Auctioneers Board.

**ELECTION OF OFFICERS FOR 2004.**

**MOTION:** Jay Clarke moved, seconded by Patrick McNamara, to retain the current officers Richard Lust as Chair, Marie Skic as Vice Chair, and Carl Theorin as Secretary. Motion carried unanimously.

**APPOINT BOARD'S REPRESENTATIVE'S FOR SCREENING PANEL BY  
BOARD CHAIR**

Richard Lust, Pat McNamara, and Mark Shain, will represent the Board on the Screening Panel.

**APPROVAL OF MINUTES DECEMBER 8, 2003**

**MOTION:** Marie Skic moved, seconded by Carl Theorin, to approve the minutes of December 8, 2003 as written. Motion carried unanimously.

**ADMINISTRATIVE REPORT  
JERRY LOWRIE, BUREAU DIRECTOR**

**BOARD ROSTER**

Add a fax number for Patrick McNamara (608) 723-6214.

**2004 MEETING DATES**

Noted.

**SUMMARY REPORTS ON PENDING COURT CASES, DISCIPLINARY CASES  
AND ADMINISTRATIVE RULES AND PRESS RELEASES**

Noted.

**TRAVEL  
REPORT ON THE NAA MID-WINTER CONFERENCE AND NALLOA MEETING  
ABOARD THE CARNIVAL CRUISE LINES TO THE BAHAMAS,  
JANUARY 11-15-2004 – RICHARD LUST**

Mr. Lust reported on the NAA Mid-Winter Conference and NALLOA Meeting aboard the Carnival Cruise Lines to the Bahamas on January 11-15, 2004. Five people attended this meeting. Question posed to Mr. Lust was whether Wisconsin's current law states that a person must be a legal resident of the state they wish to reciprocate from?

Other states reported having problems when auctioneers reciprocated from a state they were not a resident of. These states are requiring applicants to show proof of residency in the state they are reciprocating from.

NALLOA requested an up-to-date reciprocal listing of the states Wisconsin has a reciprocal agreement with. The Board agreed to work with the Department to seek additional reciprocal

agreements with other states. The Board would like to have reciprocal agreements with Indiana and Ohio.

Reciprocity issues will be deferred to the next regularly scheduled Board meeting.

NALLOA will be meeting in Madison at the Monona Terrace Convention Center on July 12-17, 2004. Mr. Lust suggested that Jerry Lowrie, Board members and/or other Department staff attend this meeting.

NALLOA would like to receive press releases of disciplinary orders issued on Wisconsin Auctioneers. They would like to list discipline actions taken in Wisconsin in the NALLOA newsletter.

Mr. Lust requested that the July test-out exam be changed to the 3rd Thursday, July 15, at the Department, during the time the National Convention is being held at the Monona Terrace Convention Center on July 12-17, 2004.

**LEGISLATION AND ADMINISTRATIVE RULES**  
**TEMPORARY LICENSE ELIMINATION 480.08(7)**  
**REGISTERED WISCONSIN AUCTIONEER ABBREVIATION REQUEST 480.20**  
**JERRY LOWRIE**

Mr. Lowrie reported on past legislation the Board had requested regarding eliminating temporary licenses and abbreviating Registered Wisconsin Auctioneers and the Board's latest request to eliminate temporary licenses. Legislation is being redrafted to eliminate temporary licenses. The request for abbreviations had been requested and is not being pursued by the legislature at this time.

**MOTION:** Marie Skic moved, seconded by Jay Clarke, to advise the Secretary to attempt to move the draft Bill regarding eliminating the temporary auctioneer license and abbreviating Registered Wisconsin Auctioneers (RWA) into this legislative session. Motion carried unanimously.

**MOTION:** Carl Theorin moved, seconded by Patrick McNamara, to appoint Richard Lust to act on the Board's behalf to review and approve the draft Bill. Motion carried unanimously.

**DRL AND TEMPORARY LICENSES**  
**TEMPORARY LICENSE - ADDING AN IDENTIFIER TO LICENSE NUMBER –**  
**UPDATE**

The Board agreed that adding an identifier to temporary license numbers at this time would be unnecessary as legislation is being drafted eliminating the temporary license.

## **DOE'S WORK WITH TEMPORARY LICENSES- DAVE O'CONNELL**

Dave O'Connell met with the Board to answer questions regarding identifying temporary licenses when Board members are screening cases and temporary license numbers that are published in advertisements of Auctions that are not identified as a temporary license.

Temporary licenses are good for 60 days. The permanent license number is the same number as the temporary license number.

## **EDUCATION AND EXAMINATIONS CONTINUING EDUCATION COURSES – APPROVED PROVIDERS**

The Board discussed the Status of Continuing Education courses and approved providers submitted by Dr. Barbara Showers. Dr. Showers reported that course applications have been received, reviewed and approved. The approved course list has been posted on the Department's website, <http://drl.wi.gov> under applicant services for auctioneers, "Continuing Education".

The testout examination is completed and available on the second Thursdays of every month in Madison. Applications for the testout examination can be found under "Forms" at the same location on the Department's the web-site

## **DISCUSS 2005-06 CONTINUING EDUCATION COURSE REQUIREMENTS.**

The Board discussed the 2005-06 continuing education course requirements. Currently credential holders are required to complete four three hour courses. Courses A, B, and C are required courses and D courses are elective. At the end of each course the candidate is required to pass a 15 question examination. Candidates also have the option of writing the testout examination which will be given on the second Thursday of the month. The testout examination consists of 60 questions and the passing grade is 42% or higher.

Richard Lust reported that Wisconsin currently requires 12 hours of continuing education every two years. Wisconsin and Illinois are the only states that are requiring 12 hours of course work for continuing education. The Board discussed changing the required hours, mandatory and elective courses so they are more in line with what other state boards are requiring for continuing education credits. Changing the hours and courses required for continuing education credits will require a rule change.

**MOTION:** Carl Theorin moved, seconded by Patrick McNamara, to request that the Secretary form an advisory and/or subcommittee to research and to discuss changes in continuing education requirements for the next biennium renewal for Auctioneers. Motion carried unanimously.

Jay Clarke and Pat McNamara have volunteered to serve on this committee. Richard Lust will serve, if needed. The Board suggested that providers of CE courses from Ed. for Wisconsin Auctioneers and Wisconsin Auction Institute, Department Staff, including Dr. Showers be invited to serve on this committee.

### **CHEATING ON EXAMINATIONS RL 4.07 – JERRY LOWRIE**

Jerry Lowrie reported on the Department's universal cheating policy that will create consistency and efficiency when it comes to discipline. Mr. Lowrie asked for Board member's comments regarding the Department's new cheating rule.

### **REGULATORY DIGEST**

The Board discussed the importance of adding continuing education requirements in the next Regulatory Digest Newsletter.

### **MISCELLANEOUS INFORMATION/CORRESPONDENCE INTERNET AUCTIONS, SCOPE OF DEPARTMENT REGULATIONS JERRY LOWRIE**

The Board reviewed and discussed William Dusso response to the Wisconsin Department of Agriculture, Trade and Consumer Protection's question on whether operations of an Internet website by a corporation, eBay, Inc. are within the scope of the regulation of auctioneers and auction companies under Ch. 480, Stats. The terms "act as an auctioneer" and "act as an auction company" are not defined in the Wisconsin Statutes, however, "auction" "auctioneer" and "auction company" are defined in the Ch. 480, Stats.

Mr. Dusso responded that the eBay website does not come within the authority to regulate auctions and auctioneers specified in Ch. 480, Stats. The eBay website is not an "auctioneer" because it does not act as an auctioneer or use the title "auctioneer." The site does not conduct an "auction" as defined in the statutes because the website listing is not a series of invitations to prospective purchasers. The website is not an "individual", does not accept offers, is not an "auction company" because it does not manage an auction or have primary responsibility for handling the proceeds of an auction, the website does not constitute an "auction".

However, Ch. 480.02(2)(d) of the law that regulates auctions and auctioneers provides a specific exemption that may apply to transactions conducted through eBay.

*An auction conducted by the owner of the goods or real estate for sale if the owner has held the goods or real estate for his or her personal use for a least one year immediately preceding the date of the auction.*

Web-site operations such as eBay or PayPal are not within the regulatory jurisdiction of the Department of Regulation and Licensing.

**PRESENTATION OF PROPOSED STIPULATIONS BY DIVISION OF  
ENFORCEMENT OR ANY THAT MAY BE SUBMITTED AFTER MAILING OF  
AGENDA**

None.

**NEW BUSINESS**

None.

**VISITORS COMMENTS**

Ken Schultz questioned whether the Department or the association would notify all credential holders of the new continuing education requirements. The Board reported that latest CE requirements will be published in the Regulatory Digest Newsletter and also on the Department's web-site.

**CLOSED SESSION**

**MOTION:** Carl Theorin moved, seconded by Marie Skic, to convene the meeting in Closed Session pursuant to Sections 19.85(1)(a), (b), and (f), Wis. Stats., to consider the licensing or discipline of a person licensed by the Department or the investigation of charges against such a person. Specifically, the Board intends to deliberate on stipulations, administrative warnings; case closings and monitoring cases. Motion carried by a roll call vote: Richard Lust - yes; Marie Skic - yes; Jay Clarke - yes; and Carl Theorin - yes; and Patrick McNamara - yes. Motion carried unanimously.

Open Session recessed at 11:58 a.m.

The Board deliberated on the Monitoring Report, the Case Status Report and Case Closings, Proposed Stipulations, and Proposed Administrative Warnings.

**RECONVENE TO OPEN SESSION**

**MOTION:** Carl Theorin moved, seconded by Jay Clarke, to reconvene into Open Session at 11:37 a.m. Motion carried unanimously.

**VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED  
SESSION, IF VOTING IS APPROPRIATE  
MONITORING ISSUES**

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**THEODORE FLEISNER**

**MOTION:** Marie Skic moved, seconded by Carl Theorin, to reinstate Badger Auctioneer, Inc. and to restore Theodore Fleisner to full licensure status provided that they have met all requirements. Motion carried unanimously.

**NICHOLAS CAIN**

No action required from the Board.

**CASE CLOSINGS**

None.

**ADMINISTRATIVE WARNINGS  
KENNETH SCHULTZ 03 AUC 017**

**MOTION:** Carl Theorin moved, seconded by Marie Skic, to rescind the Administrative Warning written for case 03 AUC 017, Kenneth Schultz. Motion carried unanimously.

**MOTION:** Marie Skic moved, seconded by Patrick McNamara, to refer case 03 AUC 017, Kenneth Schultz back to the Division of Enforcement for further investigation. Motion carried unanimously.

**ADJOURNMENT**

**MOTION:** Carl Theorin moved, seconded by Marie Skic, to adjourn the meeting at 11:45 a.m. Motion carried unanimously.

**NEXT MEETING APRIL 27, 2004**

**Agenda Items for April 27, 2004:**